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Expanding Australian police drug diversion programs for use/possess offences: A collaborative approach

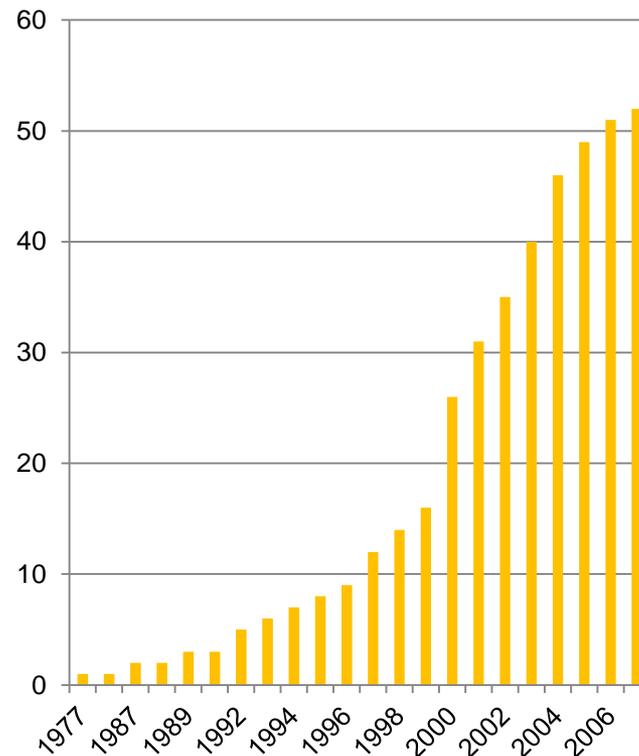
Caitlin Hughes, Kate Seear, Alison Ritter, Lorraine Mazerolle

ANZSOC Conference, Perth, 12 December 2019

Background

- Australia has long had a high rate of illicit drug use
 - 12.6% recent use (NDSHS 2016)
- Ever since 1985 the National Drug Strategy objective has been “harm minimisation”:
 - Reducing the harms without necessarily reducing use (Department of Health, 1985)
- One key approach has been through the use of police drug diversion
 - Started in 1980s
 - Expanded post 1999 Council of Australian Government Illicit Drug Diversion Initiative (Hughes & Ritter, 2008)

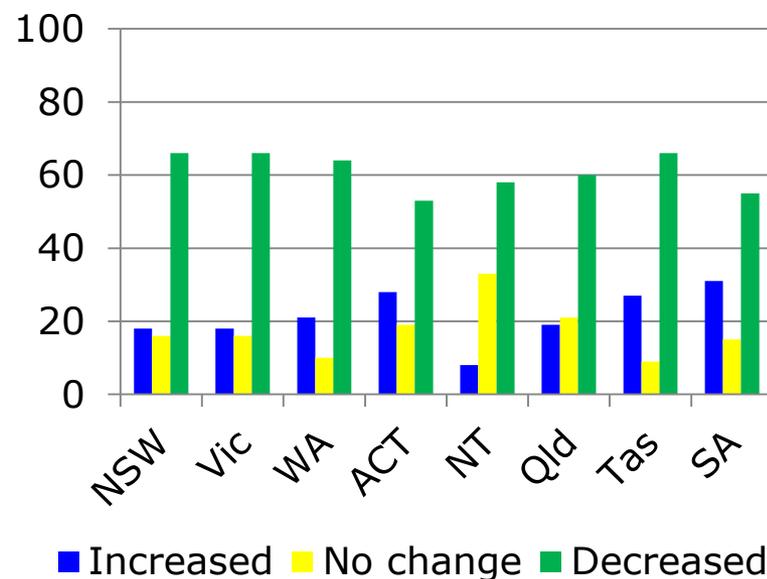
No. drug diversion programs in Australia: 1977-2007



Context (cont)

- Increasing evaluations showing benefits of drug diversion e.g. Payne et al, 2008; Shanahan et al, 2017
- Increasing calls to expand diversion e.g. National Ice Taskforce
- But large gaps in knowledge about how Australian drug laws are enforced
 - How many people are *arrested* and sent to court vs *diverted*?
 - How you could go about expanding diversion?

Pre-post offending amongst offenders **with priors**, by jurisdiction



Source: Payne, Kwiatkowski & Wundersitz, 2008

Goals

1. To outline current Australian laws and approaches taken to illicit drug use and possession in each jurisdiction.
2. To assess the scale of criminal justice responses to use/possession in Australia over the period 2010-11 to 2014-15, including
 - the number of people detected, prosecuted and/or sentenced for use/possession
 - the number of people diverted away from criminal justice proceedings
 - factors affecting who was most and least likely to receive a diversion.
3. To identify barriers and facilitators to the diversion of use/possess offenders in Australia.

Methods

1. Outline of existing laws and diversion programs

- Identified and documented statutes and diversion policies – all cross-checked by state/territory police

2. Analysis of reach of drug diversion

- Compiled 3 sets of unpublished official crime data from the Australian Bureau of Statistics (ABS) on police detections, court actions and imprisonment for drug use and possession that occurred in Australia over a five-year period (2010-11 to 2014-15)

3. Identification of barriers/facilitators

- Consulted 24 experts covering police, justice, health, and non-government organisations about the data AND about the barriers and facilitators to the diversion of use/possess offenders in Australia

The laws & drug diversion programs

Australian laws on use/possession

- Use and possession of illicit drugs for personal use is a criminal offence in all Australian states/territories
- Maximum penalties vary by jurisdiction, offence type and drug type, but on average use/possession can be sanctioned with 1-2 years prison

Table 1: Maximum penalties for use and possession of illicit drugs for personal use in Australia, by offence type and jurisdiction

Jurisdiction	Law	Personal use	Possession		
			Paraphernalia	Cannabis	Other illicit drug
ACT	Drugs of Dependence Act 1989 Criminal Code 2002 Medicines, Poisons and Therapeutic Goods Act 2008	1 yr prison &/or \$15,000 fine	No offence	Penalty notice of \$100 or 1 PU	2 yrs prison &/or 50 PU
NSW	Drug Misuse and Trafficking Act 1985	2 yrs prison &/or 20 PU	2 yrs prison &/or 20 PU	2 yrs prison &/or 20 PU	2 yrs prison &/or 20 PU
NT	Misuse of Drugs Act 2006	6 mths prison &/or 50 PU (only if person is reckless)	6 mths prison &/or 50 PU	Penalty notice of 2 or 50 PU	2 yrs prison &/or 200 PU
Qld	Drugs Misuse Act 1986	No specific use or self-administration offence	2 yrs prison	3 yrs prison (S) 15 yrs prison (I)	3 yrs prison (S) 15 yrs prison (I)
SA	Controlled Substances Act 1984	\$500 (cannabis) 2 yrs prison &/or \$2,000 (other)	2 yrs prison &/or \$2,000	Penalty notice of \$150-300 or \$500 fine	2 yrs prison and/or \$2,000
Tas	Misuse of Drugs Act 2001	2 yrs prison &/or 50 PU	50 PU	2 yrs prison and/or 50 PU	2 yrs prison &/or 50 PU
Vic	Drugs, Poisons and Controlled Substances Act 1981	5 PU (cannabis) 1 yr prison &/or 30 PU (other)	No offence	5 PU	1 yr prison &/or 30 PU
WA	Misuse of Drugs Act 1981	2 yrs prison &/or 2 yrs prison	3 yrs prison &/or \$3000	2 yrs prison &/or \$2,000	2 yrs prison &/or \$2,000

PU: Penalty Units. A "penalty unit" is a measurement used to calculate the dollar value of a fine; in each jurisdiction the value of a penalty unit is reviewed (and typically increases) periodically (on the first day of the financial year). The penalty unit is announced through special gazette. In Victoria, for example, the current value of a PU (as at the time of this report) is \$161.19. The maximum fine for a cannabis use offence is thus currently \$805.95, whereas for another illicit drug it is \$4,835.70. S and I: Summary or Indictable Offence.

Drug diversion programs

Summary of police and court diversion programs that can be employed for use/possession offences in Australia, by type and state/territory

	Police diversion for cannabis use/ possession	Police diversion for other illicit drug use/ possession	Police/court diversion for young offenders	Court diversion for minor drug or drug-related offences	Other non-AOD specific programs
ACT	√*	√	√	√	√
NSW	√		√	√	
NT	√*	√	√√	√	
Qld	√		√	√√	
SA	√*	√	√	√	√√
Tas	√	√	√	√	
Vic	√	√	√√√√	√	√√√√
WA	√	√	√√	√√√√√	

Number of ticks shows number of programs offered in each state. * Civil Penalty Schemes.

Quantifying the reach of drug diversion

The data

- Australian Bureau of Statistics (ABS) on police detections, court actions and imprisonment involving people detected/prosecuted for drug use and possession in Australia over a five-year period (2010-11 to 2014-15)
- The main unit of analysis is *unique offenders* (cf IDDR report = offences)
- All offenders had a *principal offence* of use/possess
- Examined four factors that may shape drug diversion access - age, sex, state and prior detections.
- NB. Could not look at ATSI status through this data.
- NB. Could not look at differences by drug type.

CJS responses for use/possess 2010-11 to 2014-15

- 224,520 offenders were detected for a principal offence of use/possession in Australia: an average of 44,904 offenders detected each year
- The typical profile of people detected:
 - Male (79.8%)
 - Young: aged 18-29, peak age 20-24
 - Detected on only one occasion (86.1%). i.e. few have multiple detections for use/possession
 - Most people were detected in Queensland (29.6%), New South Wales (25.4%) or South Australia (20.2%).

Figure 2: Number of offenders detected with a principal offence of use/possession in Australia, by age, 2010-11 to 2014-15

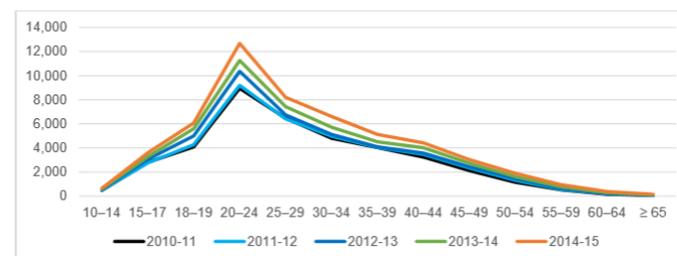
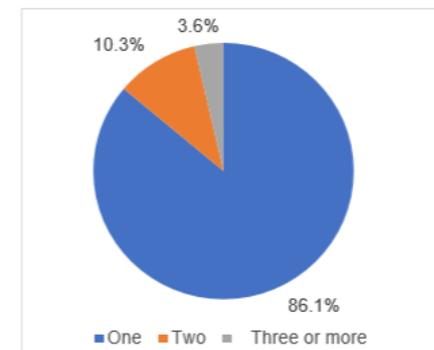


Figure 4: Percentage of offenders with multiple use/possession detections, 2010-11 to 2014-15 inclusive

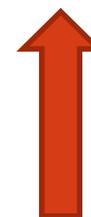


Trends in CJS responses for use/possess 2010-11 to 2014-15

- National increase in number and rate of detections (1.29 fold increase)
- But, large differences across states:
 - 1.57 fold increase increase in Queensland
 - 0.77 and 0.87 fold decrease in Tasmania & Northern Territory

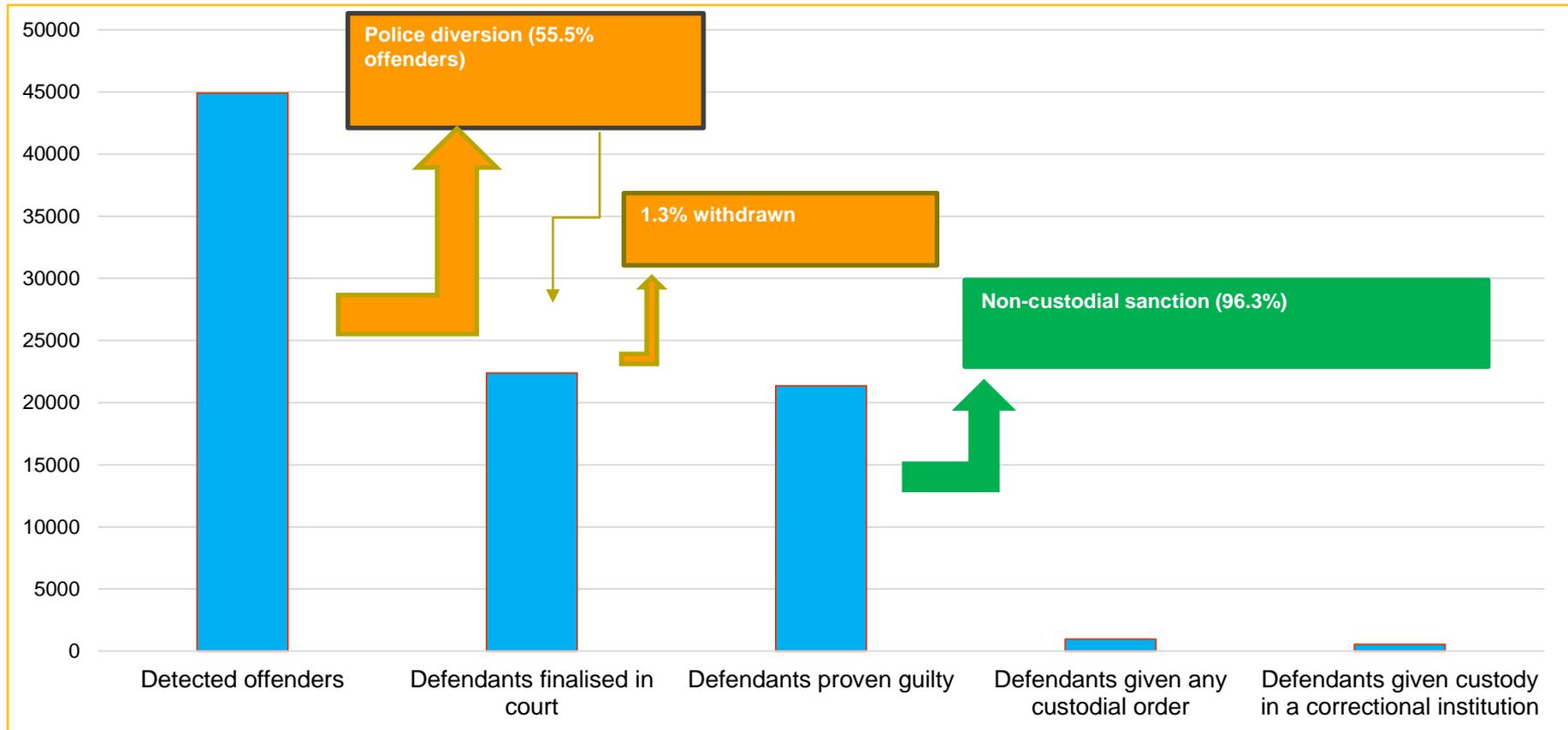
Table 6: Number and rate of offenders detected for use/possession per 100,000 population in Australia, by jurisdiction, 2010-11 to 2014-15

	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT	Aust.
Number									
2010-11	10,102	4,061	10,497	8,797	3,553	981	878	172	39,042
2011-12	10,267	4,855	11,008	8,630	3,479	968	792	243	40,239
2012-13	11,325	5,198	12,365	8,900	3,971	802	622	249	43,439
2013-14	12,111	5,268	15,041	9,321	4,574	744	677	256	47,987
2014-15	13,189	5,982	17,599	9,728	5,471	766	821	268	53,813
Rate									
2010-11	161.3	84.3	273.1	610.6	175.9	219.4	452.0	53.8	201.8
2011-12	162.2	99.1	281.2	594.0	167.5	215.7	402.3	74.7	204.9
2012-13	176.8	104.1	309.8	607.4	185.9	178.6	307.7	75.2	217.5
2013-14	186.5	103.3	371.0	630.9	210.6	165.3	329.6	76.2	236.6
2014-15	200.3	115.0	428.4	653.2	249.6	169.8	398.8	78.8	261.6

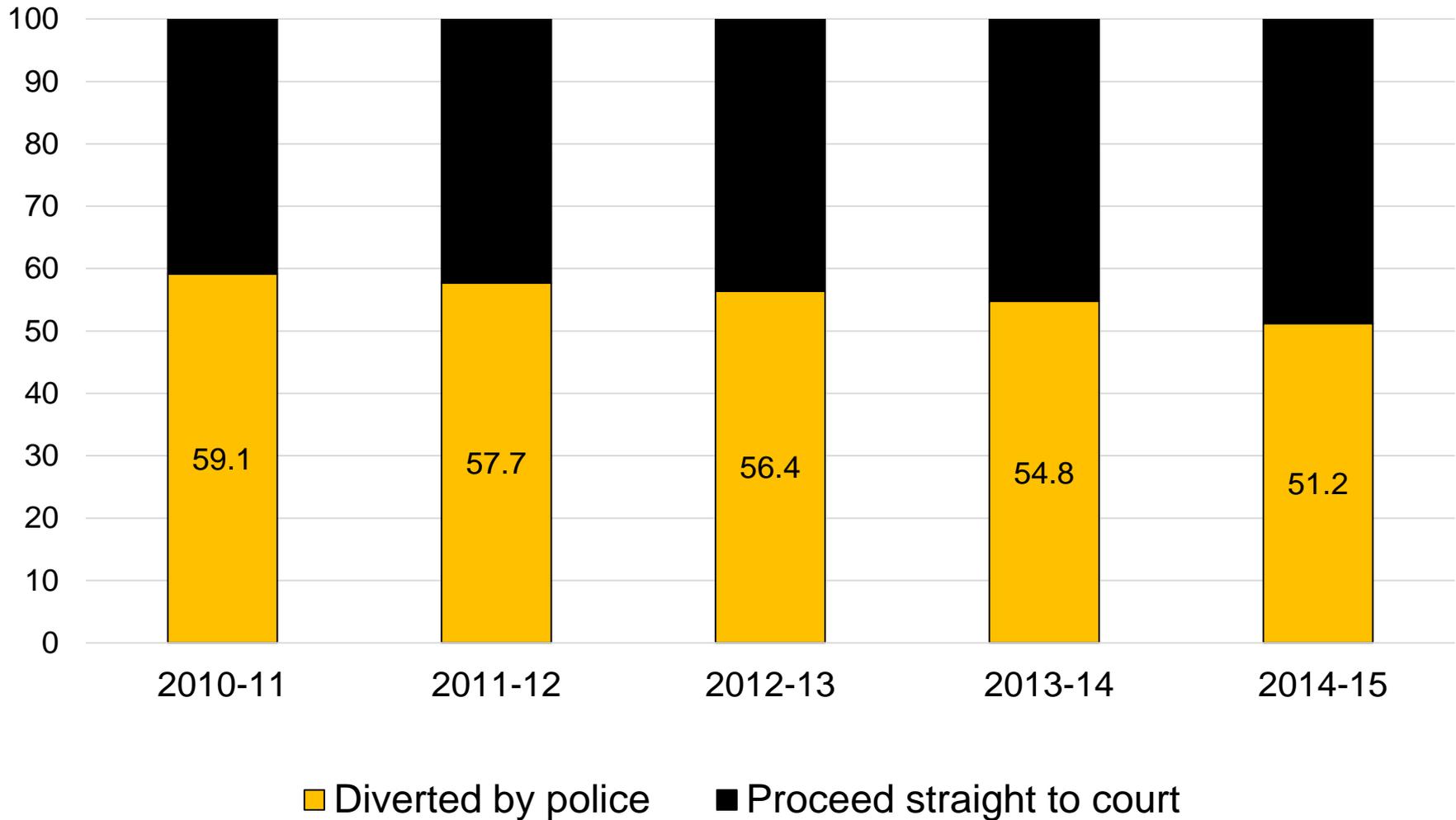


National extent of drug diversion 2010-11 to 2014-15

Annual average movement of use/possess offenders through the Australian criminal justice system and points of diversion



Trends in diversion: 2010-11 to 2014-15

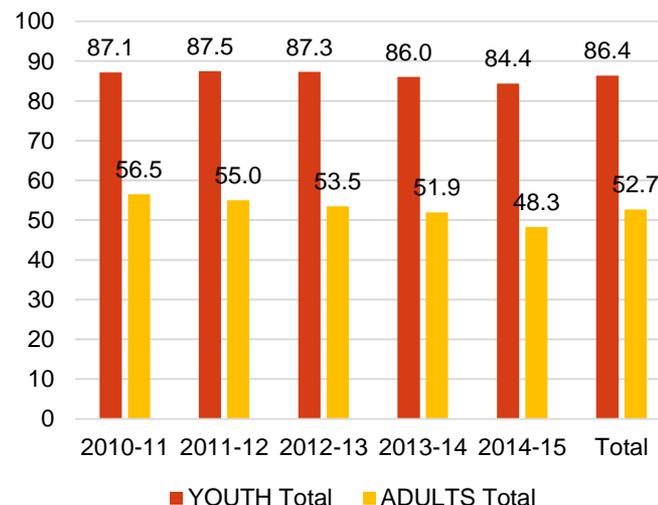


Factors affecting who is diverted

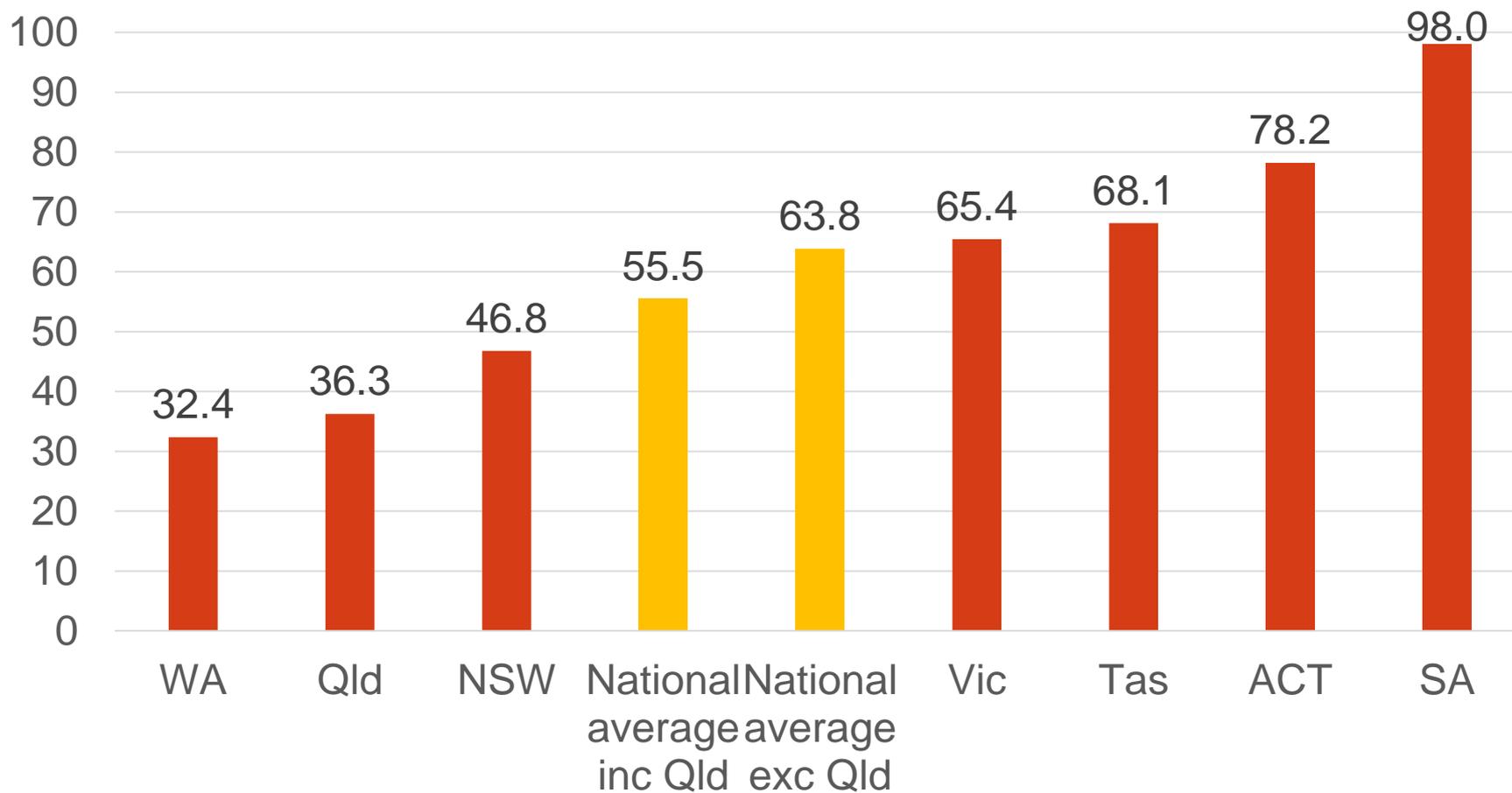
What affects receipt of a drug diversion?

- Gender: No impact.
- Age. Youth are much more likely to receive diversion: 86.4%, compared to 52.7% of those aged 18 and over.
- Prior offending. Repeat use/possess offenders are less likely to receive a diversion: 32% compared to 64%.

Diversion incidence: youth vs adults



Biggest factor affecting access is state



Stakeholder views on barriers and enablers to diversion of use/possession

What Australian stakeholders think about diversion?

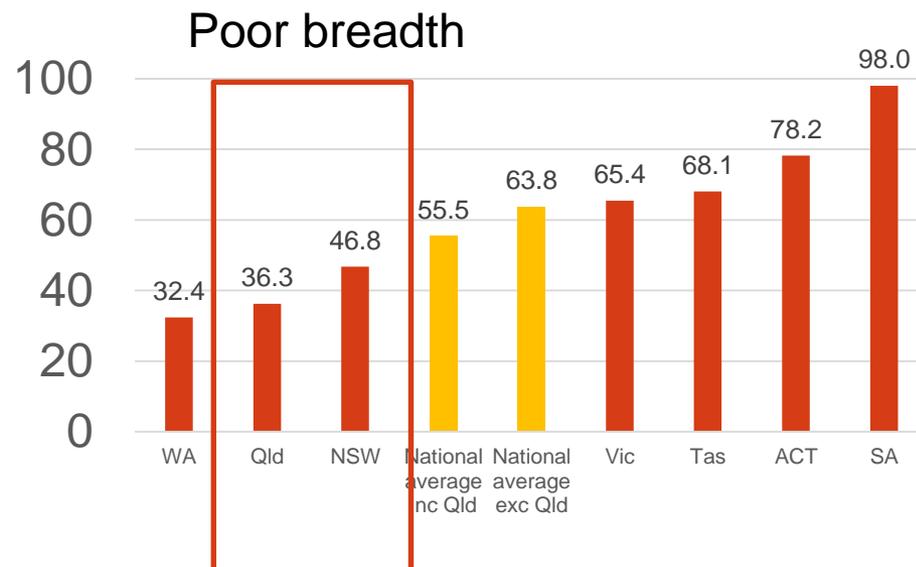
- Unanimous support for drug diversion
 - To reduce workloads
 - To reduce harm to PWUD
- Concern for downward trend
- Concern about the judicial lottery

“This shows that there is currently a noticeable lottery for people who use drugs based on which [jurisdiction] you are in.”
- Desire to increase diversion

“We cannot see any reason why – for those in possession of small quantities of drugs or equipment – it would not be 100% diverted.”

What is driving the large state differences?

1. Breadth of programs – all drugs vs cannabis only
2. Strict vs loose eligibility criteria
3. Program design – are they easy/swift for police?
4. Ease of service access in rural/regional areas



Diversion programs (selected)

Jurisdiction / Program	Program requirement	Basis – Law or policy	Target group	Limit on quantity possessed?	Limit on number of diversion opportunities	Other
WA (ODIR)	Diversion with referral for three 60 minute AOD sessions (must attend within 48 days)	Policy	Adults	25% or less of deeming weight for possession offences (eg 0.5g heroin, cocaine, methamphetamine) 2 pills	1	No previous serious drug offences or convictions for violence or sexual assault
Victoria (IDDP)	Diversion and referral to assessment and treatment	Policy	Adults and youth 10+	≤ 1g heroin, cocaine, amphetamines (Also open for pharmaceuticals)	2	Must admit offence No concurrent offences
South Australia (PDDI)	Diversion and referral for health assessment, brief intervention and/or treatment	Law	Adults and youth 10+	≤ 2g heroin, amphetamines, ecstasy	Unlimited	No requirement to admit guilt

Barriers (selected)

1. Changes in drug trends / policing of drug offenders
 - Key cause of declining diversion is increased policing of PWUD for methamphetamine and insufficient diversion programs that can cater for this.
2. Lack of treatment access
 - Long wait lists (2-3 mths), particularly in rural areas

Facilitators (selected)

1. Establish diversion options for all illicit drugs in all states and territories
2. Consider new models of diversion delivery of AOD assessment e.g. online or apps (cf face to face)
3. Adopt national frameworks such as National Ice Taskforce that commit to expanding diversion
4. Continue to build evidence on the reach of drug diversion to benchmark how states are doing
5. Introduce a legislative or hybrid legislative requirement to divert eligible offenders

What has happened since this analysis...

NSW...

On 25 January 2019 NSW introduced an on-the-spot criminal infringement notice (\$400) for people detected in possession of drugs other than cannabis in festival settings

- 303 CINS issued 1 Jan-1 Jul 2019.
- 258 for MDMA, 21 cocaine, 8 for methamphetamine

In September 2019 Former Police Commissioner Andrew Scipione recommended extending the scheme

On 11 December 2019 – NSW Government committed to indefinitely continue the CIN scheme



In November 2019 the Select Committee into Alternative Approaches to Reducing Illicit Drug Use and Effects called for a more health approach to drugs

Specifically:

- To expand and improve WA Police Drug Diversion Program (recommendation 20)
- Switch to a legislated scheme
- Remove strict eligibility barriers

The WA Government has two months to outline their response



HELP, NOT HANDCUFFS: EVIDENCE-BASED APPROACHES TO REDUCING HARM FROM ILLICIT DRUG USE

Final Report of the Select Committee into Alternate Approaches to Reducing Illicit Drug Use and its Effects on the Community

Presented by
Hon Alison Xamon MLC (Chair)
November 2019

Conclusion and implications

- Provides first stock-take of the reach of Australian drug diversion programs and a guidebook of *how* to expand diversion
- More generally it shows the benefits and worth of a collaborative approach to garner policy change



Thank You!

Acknowledgements:

- Cth Dep of Health
- All police who reviewed the diversion programs
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For more information:

A/Prof Caitlin Hughes

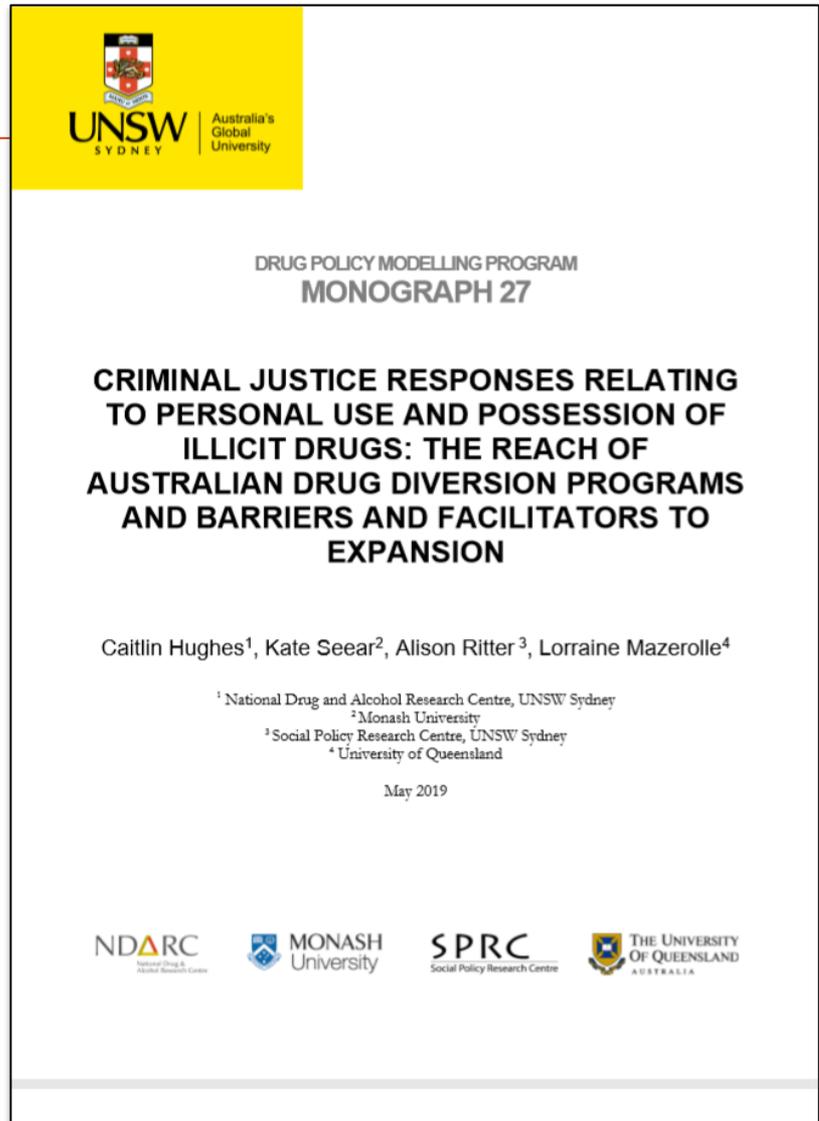
caitlin.hughes@flinders.edu.au

@DrCaitlinHughes



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